Oklahoma Blood Institute, Inc. *and* Oklahoma City Federation of Nurses and Health Professionals, Local 5009, AFT, AFL-CIO, Petitioner. Cases 16-RC-8381 and 16-RC-8386

December 16, 1982

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Paul Blackwell of the National Labor Relations Board. On August 31, 1981, the Acting Regional Director for Region 16 issued a Decision and Direction of Election in which he found appropriate a unit of all employees at all five of the Employer's facilities, excluding business office clerical employees, guards, and supervisors as defined in the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Acting Regional Director's decision on the ground that he erred in finding that only a multilocation unit is appropriate, rather than a unit limited to the Employer's 13th Street facility in Oklahoma City, as sought by the Petitioner. In addition, the Petitioner contended that the Acting Regional Director erred in declining to determine whether the Employer is a health care institution under Section 2(14) of the Act. By telegraphic order dated October 30, 1981, the Board granted the Petitioner's request for review.

The Employer is a nonprofit organization incorporated in the State of Oklahoma, where it is engaged in the business of collecting, processing, and distributing blood and blood products. The Employer operates its business at five locations: two in Oklahoma City, at 12th Street and 13th Street, and single facilities in Midwest City, Enid, and Lawton. As indicated above, the Petitioner seeks to represent a unit of all full-time and regular part-time employees at the 13th Street facility in Oklahoma City, excluding office clerical employees, guards, and supervisors. The Employer does not dispute the composition of the unit, but it contends—and the Acting Regional Director so found—that the scope of the unit must include employees of all five of its facilities. For the reasons set forth below, we find that the only appropriate unit consists of employees from three of the Employer's facilities; namely, the two located in Oklahoma City and the one in Midwest City.

The 13th Street facility in Oklahoma City houses some of the Employer's administrative offices, its only laboratory, the hospital services department, and a donor operation. In addition, it is the only Employer facility engaged in a patient treatment called apheresis, which is a blood transfusion procedure administered on a clinic or out-patient basis. All the blood collected by the Employer at any location is sent to the 13th Street facility for testing, fractionation, storage, and distribution. Approximately 60 employees are employed at the 13th Street location. At the 12th Street location, which is one block away from the 13th Street facility and has about 45 employees, the Employer maintains its business and financial offices, its department of donor recruitment, central supply, and a donor/patient service area utilized by its mobile operations. The Midwest City facility, located about 5 miles from the Oklahoma City sites, is a satellite donor room staffed by three employees. A director of donor-patient services supervises the Midwest City employees as well as phlebotomists stationed in both the 13th Street and 12th Street facilities.

The Enid and Lawton facilities, respectively located approximately 85 miles to the north and south of Oklahoma City, are known as "subcenters," employing recruiters, phlebotomists, hospital services employees, and clerical employees. Enid has about 14 employees and Lawton has approximately 20 employees. Although these subcenters are subject to overall policy and budget control from the Oklahoma City offices of the Employer's director-in-chief, Dr. Ronald Gilcher, they each have their own operational director. These directors exercise independent authority with respect to personnel management, and administer their respective subcenters as autonomous, self-contained donor operations.

Employees at all five of the Employer's facilities are covered by common wages and benefits. In addition, all employees receive their orientation and inservice training at the 13th Street building.

During a period covering at least the past 5 years, only four employees have permanently transferred between Lawton and the Oklahoma City complex, and one employee has permanently transferred from Enid to Oklahoma City. In the year preceding the hearing, there were 32 individual temporary transfers from Lawton to Oklahoma City, 22 from Enid to Oklahoma City, 14 from Oklahoma City to Lawton, and 52 from Oklahoma City to Enid.[1] These personnel shifts took place

[1] The record is unclear as to the number of actual "employees," as opposed to supervisors or managers, included in these figures. The Employer acknowledges that some individuals were temporarily transferred on more than one occasion.

primarily during major blood donation campaigns. Dr. Gilcher testified that such campaigns occur in Oklahoma City probably on an average of once per month, and that three or four individuals at a time may be assigned from the subcenters to assist.

The parties stipulated, and we find, that the 13th Street facility is a health care institution within the meaning of the Act. The parties, however, disagree as to the status of the other four facilities in question. The Employer contends that all five of its facilities, as an aggregate, should be regarded as a health care institution. In contrast, the Petitioner contends that only the 13th Street facility is a health care institution, since it is the only location that provides direct patient care. The Petitioner argues that under Board precedent the other four facilities are not considered to be health care institutions because they are blood banks involved only in serving blood donors. Following this distinction, the Petitioner asserts that only a unit limited to employees of the 13th Street facility is appropriate, since it would be improper to include health care institution employees in the same unit with employees who are not employed at a health care institution.

We disagree. The Board has specifically held that there is nothing in the legislative history of the 1974 health care amendments to the Act which precludes permitting health care institution employees from joining with nonhealth care institution employees in a single bargaining unit. *Duke University*, 217 NLRB 799 (1975). Accordingly, the health care status of 13th Street facility employees is not a factor determinative of whether their representation in a separate unit would be appropriate. As both parties agree—and we have found—that the 13th Street facility is a health care institution, we find it unnecessary to determine in this proceeding the health care institution status of the other four facilities, since any unit we find appropriate will include health care institution employees. We thus conclude that the Acting Regional Director did not err in declining to reach the question of the Employer's status as a health care institution.[2]

We find, however, that the Acting Regional Director did err in deciding that the only appropriate unit encompasses all five of the Employer's facilities. He based this conclusion on his findings that there is substantial interaction between employees at all of the Employer's locations, that the work performed by employees at the Midwest City, Enid, and Lawton facilities is functionally integrated with, and in fact is dependent upon, the work performed at the 13th Street facility, and that there is a close relationship between the 12th Street and 13th Street facilities.

Contary to the Acting Regional Director's decision, we find that the employees of the Enid and Lawton subcenters do not share a sufficient community of interest with employees of the 12th Street, 13th Street, and Midwest City facilities to require their inclusion in a single unit embracing all five locations. Although employees at all facilities share common wages, benefits, and training, the record shows that actual daily interaction between employees of either Enid or Lawton and employees of the Oklahoma City area facilities is minimal. Permanent transfers between Enid or Lawton and the Oklahoma City area facilities are very rare, averaging only one a year. Temporary interfacility transfers are more frequent, but the limited record evidence indicates that they do not occur on a daily, or even a weekly, basis, but more often than not only monthly. As mentioned above, Enid and Lawton each has its own director exercising considerable autonomy over daily operations. In addition, there is a substantial distance between the Enid and Lawton facilities (170 miles) and between either facility and Oklahoma City (85 miles). Acknowledging the significance of common working conditions and product integration among all five facilities, the factors of permanent interchange, autonomous local supervision, and geographic separation[3] weigh heavily against finding that the Enid and Lawton employees must be included in a unit with employees at the other locations. Accordingly, we conclude that the record does not support the Acting Regional Director's finding that a unit consisting of all five of the Employer's facilities is the only appropriate unit.

Nevertheless, we find, contrary to the Petitioner's assertion of the appropriateness of a single-facility unit, that the 13th Street facility is integrated with the 12th Street and Midwest City locations to such an extent as to eliminate its employees' separate community of interests. The functions that are now split between the 12th and 13th Street facilities were housed at the 13th Street building until June 1981, when some operations were moved to 12th Street solely because of the need for more space. These two facilities combined are, for all practical purposes, the center of the Employer's operations. Further, the factors of common supervision and total functional dependency of the small satellite location in Midwest City on the Oklahoma

[2] Unlike Member Fanning, we do not believe it appropriate to decide on the basis of this record speculative issues regarding the parties' possible obligations and liabilities under Sec. 8(d) and (g) of the Act. Any such issues that may arise properly are addressed in a future unfair labor practice case involving a real controversy between the parties.

[3] See, e.g, *Beckett Aviation Corporation—Cleveland*, 254 NLRB 88 (1981); *Wescom, Inc.*, 230 NLRB 1159 (1977); *Associated Grocers*, 227 NLRB 798 (1977).

City facilities preclude a finding that the three employees in Midwest City could constitute an appropriate separate unit.

For the foregoing reasons, we find that the only appropriate unit consists of all employees at the Employer's 12th Street, 13th Street, and Midwest City facilities, excluding office clerical employees, guards, and supervisors.[4] Although this unit is broader than that requested by the Petitioner, we will not dismiss the petition inasmuch as the Petitioner stated at the hearing that it might be willing to proceed to an election in a larger unit. Accordingly, we shall direct an election in the unit found appropriate, subject to the Regional Director ascertaining that the Petitioner has made an adequate showing of interest among employees in that unit. If the Petitioner does not now wish to participate in an election in the unit found appropriate herein, it shall be permitted to withdraw its petition without prejudice upon written notification to the Regional Director within 10 days from the date of this Decision on Review.

[Direction of Election[5] omitted from publication.]

MEMBER FANNING, concurring and dissenting:

I concur with my colleagues to the extent they find that the three Oklahoma City area facilities of this Employer may constitute an appropriate unit,[6] contrary to the Acting Regional Director's conclusion that the only appropriate unit must include all five of its locations in the State.

Unlike my colleagues, however, I cannot approve the Acting Regional Director's refusal to reach the issue of the Employer's status. Over a year ago, the Board granted review specifically on the question of whether the Employer is a health care institution, finding that it raised substantial issues.

I agree that it does, and believe the better course is to resolve the matter now. I think the parties may reasonably anticipate that the Board would do so, after granting review on a particular issue which the parties have squarely presented to it. But more importantly, in my view, it would serve to relieve the tensions of continued controversy between the parties concerning their own—and the affected employees'—obligations and liabilities under Section 8(d) and (g) of the Act. My colleagues' approach[7] seems likely to invite further litigation, with all its attendant costs, over the fairly obvious questions presently left unanswered.[8] As resolving the matter now before us would help obviate such needless costs, and better utilize the Board's own resources, I dissent from my colleagues' refusal to decide the issue.

Additionally, I would remand the case to the Regional Director for reconsideration in view of the statutory difficulties presented by the inclusion of apparently qualified professionals[9] in the unit together with technical, service and maintenance, and clerical employees.

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[4] We are at a loss to understand our dissenting colleague's call for a remand regarding the issue of including professionals in the unit. The Acting Regional Director explicitly found that the Employer's RNs, LPNs, and medical technologists are not employed as professional employees within the meaning of the Act, since their employment is not based on their professional/technical skills and they perform the same duties as persons who have been trained on the job. No party requested review of that finding, and at the close of the hearing the Petitioner acknowleged that there was no evidence to support a claim that a separate professional unit would be appropriate. Accordingly, there is no danger here that professionals are being included in a unit with nonprofessionals.

[5] [*Excelsior* footnote omitted from publication.]

[6] I would not, however, conclude that the three locations comprise the only appropriate unit.

[7] I find my colleagues' reliance on *Duke University, supra*, in this regard unpersuasive; both because the case itself appears to be *sui generis* on this aspect, and because the underlying factors relied on by the Board in that case are not present here.

[8] As indicated above, I consider the questions to be obvious rather than merely speculative. The matter of the Employer status was at issue both during and after the hearing. Indeed, as stated in the Board's telegraphic Order, review was "granted as it raises substantial issues warranting review on the question of whether the Employer is a health care institution, *and* with regard to the appropriate unit herein." (Emphasis supplied.) It is evident that the two issues are not the same, as it is apparent that the questions involved are not limited to unfair labor practice matters; though the majority's approach now will likely push the parties to subsequent litigation to resolve them.

[9] E.g., medical laboratory technologists at the 13th Street facility, where all blood from throughout the State is taken for testing in the laboratory and preparation for subsequent distribution, and registered nurses who attend patients during treatment. In these circumstances the mere fact that they may perform duties the same as other persons trained on the job is insufficient in my view to support the conclusion that they "consequently" are not professional employees; particularly as an issue of statutory prohibition is involved.